Media General Operations, Inc. d/b/a Richmond Times-Dispatch *and* International Association of Machinists and Aerospace Workers, AFL–CIO. Case 5–CA–29619

March 28, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent seeks to contest the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on April 2, 2001, the Acting General Counsel of the National Labor Relations Board issued the complaint on April 16, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 5–RC–15077. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On May 11, 2001, the Acting General Counsel filed a Motion for Summary Judgment. On May 16, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response to the Notice to Show Cause.

In addition, on June 6, 2001, the Respondent filed a Motion for Summary Judgment in reply to the General Counsel's motion. The General Counsel filed an opposition to the Respondent's motion on June 22, 2001. The Respondent then filed a reply in support of its motion on June 28, 2001, and the General Counsel filed a response to the Respondent's reply on July 16, 2001.

Ruling on Motion for Summary Judgment

In its answer the Respondent attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.[1]

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).[2]

In its reply Motion for Summary Judgment, the Respondent contends that it cannot be found to have violated Section 8(a)(5) and (1) of the Act because the certified Union, International Association of Machinists and Aerospace Workers, AFL–CIO (IAM or International Union or the Union) has never made a request to bargain of the Respondent.[3] The Respondent argues that the only demand to bargain addressed to the Respondent has been made by Richmond Lodge No. 10 of the IAM (Lodge 10), which is a separate and distinct entity from IAM and is not the certified bargaining representative. The Respondent asserts that it has never been under a duty to bargain with Lodge 10, and because a certified bargaining representative has made no demand to bargain, the Respondent cannot be found to have unlawfully refused to bargain in this proceeding. For the reasons set forth below, we reject the Respondent's contention and find that it has failed to raise any material factual issue warranting a hearing regarding whether a valid bargaining demand has been made.

The undisputed facts show that by a letter dated February 15, 2001, a business representative for Lodge 10 requested the Respondent to provide information and to propose dates for bargaining "relative to the IAM bargaining unit." By letter to Lodge 10 dated March 13, 2001, the Respondent stated that ". . . in response to your letter dated February 15, 2001 . . . [p]lease be advised . . . that the Richmond-Times Dispatch declines to recognize or bargain with your union." On April 2, 2001, the certified International Union filed the instant unfair labor practice charge, alleging, inter alia, as follows:

[1] The Respondent's answer also raises as an affirmative defense the argument that the instant complaint must be dismissed because it failed to set a time and place for a hearing within 5 days after its issuance. The Respondent raised this same contention in its motion to dismiss complaint for noncompliance with the Statute that it filed with the Board on April 27, 2001. In an unpublished Order dated May 23, 2001, the Board denied the Respondent's motion to dismiss as lacking in merit. The Board found that the absence of a notice of hearing was not prejudicial, stating: "At this time, it is not clear that there will be issues of fact warranting a hearing." For the reasons set forth infra, we now find that a hearing is not warranted in this proceeding because there are no material facts in dispute. Accordingly, we again conclude that the Respondent was not prejudiced by the Region's failure to state a time and place for a hearing.

[2] Chairman Battista and Member Schaumber did not participate in the underlying representation proceeding. However, they agree that the Respondent has not cited any new evidence or special circumstances warranting a hearing in this proceeding and that summary judgment is appropriate.

[3] The Respondent's answer also denies that the Union requested bargaining and that it refused this request.

> Since on or about March 13, 2001, and at all times thereafter, the Employer . . . has refused to bargain in good faith with the International Association of Machinists and Aerospace Workers, AFL–CIO, a labor organization chosen by a majority of its employees in an appropriate unit, for the purpose of collective bargaining . . . .
>
> The NLRB conducted an election that resulted in the Petitioner receiving a majority of the vote and . . . the NLRB issued a Certification of Representative on January 24, 2001. On February 15, 2001, the Petitioner requested negotiations begin (Enclosure 1) and the Employer declined our request on March 13, 2001 (Enclosure 2).

Based on the foregoing, we reject the Respondent's contention that the International Union never made a bargaining demand. We find that even if the February 15, 2001 letter was not, in itself, a sufficient demand by the International Union, the refusal-to-bargain charge filed by the International Union on April 2, 2001, which referred to that letter, clarified any ambiguity as to which entity was requesting bargaining. Thus, as stated above, IAM's charge clearly alleged that on February 15, 2001, the date of the Lodge 10 letter, negotiations were requested and that on March 13, 2001, the Respondent denied "our request." Therefore, we find that the charge, together with the letter, constituted a valid demand for bargaining by the International Union. See *Parkview Manor*, 321 NLRB 477 (1996) (finding that unfair labor practice charge filed by certified local, together with letter sent by affiliated labor organization, constituted valid demand for bargaining), citing *Williams Enterprises*, 312 NLRB 937, 938–939 (1993), enfd. 50 F.3d 1280 (4th Cir. 1995).[4]

Accordingly, we grant the General Counsel's Motion for Summary Judgment, deny the Respondent's Motion for Summary Judgment, and will order the Respondent to bargain with the Union.

On the entire record, the Board makes the following

[4] *Newell Porcelain Co.*, 307 NLRB 877 (1992), petition for review denied sub nom. *Electrical Workers v. NLRB*, 986 F.2d 70 (4th Cir. 1993), relied on by the Respondent, is distinguishable. In *Newell Porcelain*, a company obligated to bargain with a newly-certified union made a good faith, albeit unsuccessful, effort during negotiations to ascertain that it was in fact negotiating with that union, and was held justified in suspending negotiations pending clarification of the identity of the party with which it was negotiating. By contrast, the Respondent here made no attempt to clarify the asserted ambiguity and ascertain the relationship between Lodge 10 and the International Union.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Mechanicsville, Virginia, has been engaged in the publication of the Richmond Times-Dispatch, a daily newspaper. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenues in excess of $200,000, subscribed to various interstate news services, including the Associated Press, and advertised various nationally sold products valued in excess of $5000 directly from points outside the Commonwealth of Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held September 22, 2000, the Union was certified on January 24, 2001, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time maintenance machinists, HVAC technicians, electro mechanical technicians, electronic technicians, maintenance utility workers, maintenance mechanics, electrical technicians and facilities systems technicians employed by the Employer at its Hanover County, Mechanicsville, VA facility; but excluding all other employees, office clerical employees, professional and managerial employees, watchmen and guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since April 2, 2001, the Union has requested the Respondent to bargain, and the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after April 2, 2001, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Media General Operations, Inc. d/b/a Richmond Times-Dispatch, Mechanicsville, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time maintenance machinists, HVAC technicians, electro mechanical technicians, electronic technicians, maintenance utility workers, maintenance mechanics, electrical technicians and facilities systems technicians employed by the Employer at its Hanover County, Mechanicsville, VA facility; but excluding all other employees, office clerical employees, professional and managerial employees, watchmen and guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Mechanicsville, Virginia, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 2, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with International Association of Machinists and Aerospace Workers, AFL–CIO as the exclusive representative of the employees in the bargaining unit.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time maintenance machinists, HVAC technicians, electro mechanical technicians, electronic technicians, maintenance utility workers, maintenance mechanics, electrical technicians and facilities systems technicians employed by us at our Hanover County, Mechanicsville, VA facility; but excluding all other employees, office clerical employees, professional and managerial employees, watchmen and guards and supervisors as defined in the Act.

MEDIA GENERAL OPERATIONS, INC. D/B/A RICHMOND TIMES-DISPATCH